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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/899,029	07/06/2001	Gary P. Cote		6055

7590

11/05/2002

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EXAMINER

BARTZ, CLIFFORD T

ART UNIT

PAPER NUMBER

3683

DATE MAILED: 11/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

SK

Office Action Summary

Application No.

09/899,029

Applicant(s)

COTE, GARY P.

Examiner

Clifford Bartz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) 1,2,16,19-24,27,29 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-15,25,26,28,31-36 and 39-47 is/are rejected.
- 7) ☒ Claim(s) 17,18,37 and 38 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Part III DETAILED ACTION

Claim Objections

1. Claim(s) 16, 30 is(are) objected to in that they have been made dependent on cancelled claim(s) 1, 29. For this reason they will not be treated.

Claim Rejections - 35 USC § 112

2. Claim(s) 25, 26 is(are) rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to parent claim 25, the phrase of the second line is incomplete and thus vague. It is suggested that applicant review the originally filed claim(s) 25 so as to clarify the recitation.

The dependent claims are rejected under 35 USC 112 as incorporating the defects of the claims from which they depend.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim(s) 31, 32, 33, 34 is(are) rejected under 35 U.S.C. § 102(b) as being anticipated by Krauer.

Krauer discloses a twist type handle, brake cable.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claim(s) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 25, 26, 46, 47 is(are) rejected under 35 U.S.C. § 103 as being unpatentable over Miyazaki in view of Krauer.

As to parent claim(s) 46, 47; Miyazaki discloses a brake cable; drum brake, brake shoes in the fourth complete paragraph of column 12. Miyazaki does not disclose a twist type handle. Further, Miyazaki does not disclose the particular variations recited in claims 3 – 8; and further variations as recited in claim(s) 9 – 15. Krauer is relied upon merely to show that it is known in the art to provide a twist-type control handle (third complete paragraph in column 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the wheelbarrow of Miyazaki with a twist-type control handle like that of Krauer in order to activate braking without losing contact with the handle.

It would have been an obvious matter of design choice dependent on cost and equipment availability considerations to provide the brake of Miyazaki with steel, plastic

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materials, and with sealing and mounting plates, et al (as recited in claim(s) 3 – 8) in order to optimize the cost.

It would have been an obvious matter of design choice dependent on cost and equipment availability considerations to provide the brake of Miyazaki with variations in twist type handles, locking means (as recited in claim(s) 9 – 15); in order to provide a higher degree of versatility.

Claim(s) 28 is(are) rejected under 35 U.S.C. § 103 as being unpatentable over Miyazaki in view of Krauer.

Miyazaki in view of Krauer discloses all the structure of the claimed device as detailed above: except for the wheelbarrow utilizing two wheels; and a drum brake in the center as recited in claim 28. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize two wheels; since the examiner takes Official Notice that two wheel wheelbarrows are known in the brake art and it would be within the level of ordinary skill in the art for a routineer to utilize two wheels in Miyazaki, as a design variation improving the cost or capability of Miyazaki. It would have been a further obvious matter of design choice dependent on cost and utility considerations to provide the wheelbarrow of Miyazaki with a drum brake mounted in the center of the axle.

Claim(s) 35, 36 are rejected under 35 USC 103 as being unpatentable over Krauer

Krauer discloses all the structure of the claimed device as detailed above: except for a clipper. It would have been an obvious matter of design choice dependent on utility considerations to provide Krauer with a clipper in order to lock the handle at desired positions.

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4. Claim(s) 39, 40, 41, 42 is(are) rejected under 35 U.S.C. § 103 as being unpatentable over Krauer in view of Miyazaki.

Krauer in view of Miyazaki discloses all the structure of the claimed device as detailed above: except for a drum brake and associated structures. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize drum brakes; since the examiner takes Official Notice that drum brakes are known in the brake art and it would be within the level of ordinary skill in the art for a routineer to combine such drum brakes with Krauer in view of Miyazaki as a design variation improving the cost and capability of Krauer in view of Miyazaki. It would have been a further obvious matter of design choice dependent on cost and equipment availability considerations to provide the brake of Krauer in view of Miyazaki with a brake arm, internal drum, backing plate.

Claim(s) 43, 44 is(are) rejected under 35 U.S.C. § 103 as being unpatentable over Krauer in view of Miyazaki.

Krauer in view of Miyazaki discloses all the structure of the claimed device as detailed above: except for a frame mounted caliper with a wheel disc. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize a frame mounted caliper with a wheel disc; since the examiner takes Official Notice that a frame mounted caliper with a wheel disc are known in the brake art and it would be within the level of ordinary skill in the art for a routineer to combine such a frame mounted caliper having a wheel disc, with Krauer in view of Miyazaki as a design variation improving the cost and capability of Krauer in view of Miyazaki.

5. Claim(s) 45 is(are) rejected under 35 U.S.C. § 103 as being unpatentable over Krauer in view of Miyazaki.

Krauer in view of Miyazaki discloses all the structure of the claimed device as detailed above: except for the claimed apparatus utilized in a wheelbarrow. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the claimed apparatus in a wheelbarrow; since the examiner takes Official Notice that wheelbarrows are known in the brake art and it would be within the level of ordinary skill in the art for a routineer to utilize the structure of Krauer in view of Miyazaki in a wheelbarrow, as a design variation improving the cost or utility of Krauer in view of Miyazaki.

Response to Amendment

Applicant's arguments filed 10/01/02 have been fully considered but are not deemed to be persuasive.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the art.

It is noted that applicant has not amended the set of claim(s), and not alluded to the anticipation rejection made in the first office action.

Allowable Subject Matter

Claim(s) 17, 18, 37, 38 would be considered allowable if rewritten to correct any objections; or overcome any applicable rejections, under 35 USC 112; and to include all the limitations of the base claim and any intervening claims.

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Conclusion

6. Applicant's amendment to the claim(s), namely newly presented claim(s) 46, 47 necessitated the new grounds of rejection. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for response to this final action is set to expire THREE MONTHS from the date of this action. In the event a first response is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for response expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Bartz whose telephone number is (703)308 - 2564. The examiner can normally be reached on Mondays thru Fridays from 8:30 am to 3:30 pm.

(clifford.bartz@uspto.gov) [Fax -(703)308 - 3519]

If attempts to reach the examiner by telephone are unsuccessful; a message may be left at the Group Receptionist, whose telephone number is (703) 308 - 1113 .

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Lavinder, can be reached on (703)308- 3421.

Any further inquiry of a general nature or relating to the status of this application may also be directed to the Group Receptionist, whose telephone number is (703) 308 - 1113.


Clifford T. Bartz

Examiner

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Summary

Total Claim(s) = 1 - 47
Canceled Claim(s) = 1, 2, 19 - 24, 27, 29
Untreated Claim(s) = 16, 30
Rejected Claim(s) = 3 - 15, 25, 26, 28, 31 - 36, 39 - 47
Objected Claim(s) = 17, 18, 37, 38


JACK LAVINDER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600
11/1/02